

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION

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DATE: July 29, 2013  
DOCKET NO.: RR-02635B-13-0034

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

ARIZONA DEPARTMENT OF TRANSPORTATION  
(UPGRADE CROSSINGS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 7, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 13, 2013 AND AUGUST 14, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

JUL 29 2013

DOCKETED BY	nr
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*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347  
[www.azcc.gov](http://www.azcc.gov)

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE EXISTING  
11 CROSSINGS OF THE BURLINGTON  
12 NORTHERN AND SANTA FE RAILWAY AT  
13 THE INDIAN SCHOOL ROAD CONNECTOR  
14 AND 35TH AVENUE IN THE CITY OF  
15 PHOENIX, MARICOPA COUNTY, ARIZONA, AT  
16 AAR/DOT NOS. 025-424-D AND 025-425-K.

DOCKET NO. RR-02635B-13-0034

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 DATE OF HEARING: May 9 and June 10, 2013

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

15 APPEARANCES: James R. Redpath, Assistant Attorney General, on  
16 behalf of the Arizona Department of Transportation;

17 Mr. Patrick J. Black and Ms. Margret Esler, Fennemore  
18 Craig, on behalf of the Burlington Northern Santa Fe  
19 Railway; and

20 Mr. Charles Hains and Ms. Bridget Humphrey, Staff  
21 Attorneys, Legal Division on behalf of the Safety  
22 Division of the Arizona Corporation Commission.

23 **BY THE COMMISSION:**

24 On February 20, 2013, the Arizona Department of Transportation ("ADOT") filed with the  
25 Arizona Corporation Commission ("Commission") an application for approval for the Burlington  
26 Northern and Santa Fe Railway Company ("BNSF") to upgrade two existing crossings at the BNSF's  
27 tracks at the Indian School Road Connector and at 35<sup>th</sup> Avenue, in Phoenix, Arizona, at AAR/DOT  
28 Nos. 025-424-D and 024-425-K, respectively ("Application").

On March 6, 2013, by Procedural Order, a hearing was scheduled on May 9, 2013.

On March 26, 2013, ADOT filed certification that it had provided public notice in accordance

1 with the Commission's Procedural Order.

2 On May 9, 2013, a full public hearing was convened before a duly authorized Administrative  
3 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the BNSF and the  
4 Commission's Safety Division and Railroad Safety Section ("Staff") were present with counsel.  
5 Although the City had not filed to intervene, an attorney was present on its behalf. Counsel for Staff  
6 requested a short 30-day continuance because Staff believed that certain changes had been made to  
7 the proposed upgrades by ADOT, and Staff wanted to further review the Application. A recess was  
8 taken and after the parties discussed the matter, Staff maintained its position for a brief continuance.  
9 Thereafter, the parties agreed that the proceeding be reconvened on June 10, 2013.

10 On May 10, by Procedural Order, the proceeding was continued to June 10, 2013.

11 On June 10, 2013, the Public Hearing was reconvened before a duly authorized  
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the BNSF  
13 and Staff were present with counsel. At the conclusion of the hearing, the matter was taken under  
14 advisement pending submission of a Recommended Opinion and Order to the Commission.

15 \* \* \* \* \*

16 Having considered the entire record herein and being fully advised in the premises, the  
17 Commission finds, concludes, and orders that:

### 18 FINDINGS OF FACT

19 1. On February 20, 2013, ADOT filed an application for approval for the BNSF to  
20 upgrade two existing crossings at the BNSF's tracks at the Indian School Road Connector and 35<sup>th</sup>  
21 Avenue, in Phoenix, Arizona, at AAR/DOT Nos. 025-424-D and 025-425-K, respectively.

22 2. Several diagnostic review meetings of the proposed upgrades to these crossings were  
23 held with representatives of Staff, ADOT, the City of Phoenix ("City") and the BNSF to reach an  
24 agreement for the improvements<sup>1</sup>.

25  
26 <sup>1</sup> The proposed upgrade of the Indian School Road Connector and the 35<sup>th</sup> Avenue crossings were approved by the  
27 Commission in Decision No. 67777 (May 2, 2005) as part of the 2005 Annual Array to utilize federal funding pursuant to  
28 23 U.S.C. §130 ("Section 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse  
ADOT for 100 percent of the cost of the projects. Section 130 projects are used to eliminate hazards to pedestrians and  
vehicles at public railroad crossings which are not primarily for the benefit of the railroad.

1           3.       The Indian School Road Connector is a four lane divided roadway, consisting of two  
2 lanes westbound and two lanes eastbound.<sup>2</sup> The proposed project consists of installing two new  
3 automatic gates with LED flashing light signals on the curb side of the Indian School Road  
4 Connector. Additionally, two automatic gates with LED flasher units will be installed within a new  
5 elevated median, and new concrete surface panels with advanced preemption will be installed.<sup>3</sup>

6           4.       35<sup>th</sup> Avenue is a six-lane roadway consisting of four northbound lanes and two  
7 southbound lanes. There are cantilevers with LED flashing lights at the crossing as well as crosshatch  
8 pavement markings that instruct motorists not to stop in the area of the tracks. The proposed  
9 improvements consist of installing advanced preemption circuitry along with a new pre-signal south  
10 of the existing crossing for northbound traffic on 35<sup>th</sup> Avenue.

11          5.       Improvements will also be made by the City at the above-referenced crossings in the  
12 form of ramps at the sidewalks in conformance with the Americans with Disabilities Act ("ADA").

13          6.       The proposed improvements at the two at-grade crossings are consistent with safety  
14 measures utilized at similar at-grade crossings in the state.

15          7.       Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
16 with notice of the Application and hearing thereon by both certified U.S. mail and publication in the  
17 Arizona Business Gazette, a newspaper of general circulation in the area of the two railroad  
18 crossings.

19          8.       The hearings were held as scheduled on May 9 and June 10, 2013.

20          9.       Mr. Robert Travis, a civil engineer and ADOT's Railroad Liaison, testified in support  
21 of the Application. Mr. Travis stated that the improvements were first begun in 2007 and involved a  
22 modification for 35<sup>th</sup> Avenue with the installation of cantilevers in both directions. Subsequently, the  
23 City was requested to complete an engineering report which would evaluate whether automatic gates  
24 could be installed on 35<sup>th</sup> Avenue.

25  
26  
27 <sup>2</sup> The Indian School Road Connector consists of access roadways running parallel to Indian School Road which is  
constructed as an overpass that passes over Grand Avenue and the tracks of the BNSF.

28 <sup>3</sup> Advanced preemption is the notification of an approaching train, forwarded to the Highway Traffic Signal Controller  
Unit or assembly by railroad equipment for a period of time prior to activating the railroad active warning devices.

1           10.     Mr. Travis stated that the Indian School Road Connector would have improvements  
2 made based on an agreement made between ADOT and the BNSF, with new flashing lights and gates  
3 in a new location and advanced preemption for the gates that will control the six way intersection  
4 between Grand Avenue, 35<sup>th</sup> Avenue and the Indian School Road Connector. (Tr.7:6-19)

5           11.     Mr. Travis further described work that will be performed by the City with respect to  
6 the installation of the medians, curbs and gutters and sidewalks at both crossings. This work will  
7 include updating sidewalks to ADA standards for pedestrians along with the installation of a pre-  
8 signal for traffic which is northbound on 35<sup>th</sup> Avenue. (Tr.7-8:20-3)

9           12.     Additionally, Mr. Travis stated that ADOT will utilize its existing contractor to install  
10 the medians and curbs on the Indian School Road Connector in 2013, so that the BNSF can complete  
11 all of its work on the automatic warning devices on that roadway and the City can complete its design  
12 work for its improvements, within a year or earlier. (Tr.8:4-13)

13           13.     According to the Staff Report, these improvements were approved for Section 130  
14 funding as part of the Commission's 2005 Annual Array approved in Decision No. 67777 (May 2,  
15 2005).

16           14.     According to Mr. Travis, Section 130 projects have a ten year time frame whereby  
17 once a project is included in an Array, the FHWA places a ten-year limit on a project to either go into  
18 construction or be included in active right-of-way acquisition. However, Mr. Travis pointed out that  
19 because cantilever work was performed by ADOT in 2008, he believes the "ten year clock may not  
20 be as critical as we were thinking." (Tr.10:1-14)

21           15.     Mr. Travis stated that the improvements planned for the crossings as described in the  
22 Application will improve the safety for pedestrians and for motorists who use these roadways.  
23 (Tr.11:14-21)

24           16.     Mr. Travis testified that the BNSF will maintain their lights and gates and crossing  
25 predictors. (Tr.26-27:24-2)

26           17.     Mr. Travis estimated that the improvement work on the respective crossings including  
27 the work since 2009 will cost approximately a little over \$2,000,000.00. (Tr.29:2-6)

28

1        18. Mr. Travis stated that after meetings between the City, ADOT, the BNSF and Staff,  
2 ADOT believes the improvements as discussed herein can go forward. Installing automatic gates on  
3 35<sup>th</sup> Avenue would require medians, resulting in the loss of a traffic lane, and Mr. Travis testified that  
4 redesigning the project could result in a multiyear delay, if it is even possible.<sup>4</sup> (Tr.12:15-24)

5        19. According to Mr. Travis, the purpose of gates on 35<sup>th</sup> Avenue would be to prevent cars  
6 from moving forward after the cars in front of them have moved away, and thereby avoid them  
7 getting stuck on the tracks. (Tr.14:23-25)

8        20. According to Mr. Travis, City representatives reported that the current Level of  
9 Service ("LOS") on 35<sup>th</sup> Avenue is LOS-E. (Tr.27-28:24-3)

10       21. Mr. Travis stated that if grade separation is considered for this intersection it will  
11 require up to a five year delay to prepare a study, but added that grade separation would be extremely  
12 costly and would cost in excess of \$50,000,000 because traffic would have to go either under  
13 everything or over everything, including the existing Indian School Road overpass. (Tr. 29-30: 13-4)

14       22. Mr. Travis stated that both the Maricopa Association of Governments ("MAG") and  
15 ADOT are reviewing the entire Grand Avenue corridor extending from Van Buren Avenue in the  
16 City to State Route 303 in Surprise and their relationship for needed improvements and where the  
17 funding for the improvements will come from. (Tr.15-16:6-2)

18       23. Mr. Travis stated that the MAG study is going forward and he estimated that  
19 recommendations will not be made until the summer or fall of 2014.

20       24. Mr. Travis stated that ADOT is willing to file, within fifteen months of the effective  
21 date of this Decision, a progress report concerning the installation of a median and crossing gates for  
22 northbound traffic on 35<sup>th</sup> Avenue in the City. (Tr.17:10-14)

23       25. Mr. Brian Lehman, the supervisor of the Railroad Safety Section for the Commission,  
24 testified that he had overseen the preparation of the Staff Memorandum which describes the nature of  
25

26  
27       1.       <sup>4</sup> Mr. Travis testified that the problem with the installation of automatic gates at 35<sup>th</sup> Avenue is because  
28 there are a total of four northbound traffic lanes, and from an engineering standpoint, since a gate normally covers two  
lanes, when more than two lanes exist, construction requires the presence of a median. (TR.13-14:13-6)

1 ADOT's proposed improvements at the Indian School Road Connector and the 35<sup>th</sup> Avenue at-grade  
2 crossings. (Tr.31:20-25)

3 26. Mr. Lehman further testified that he had also directed the preparation of a supplement  
4 to the Staff Memorandum which was prepared after discussions with the other parties after the initial  
5 hearing in this matter. (Tr.32-33:23-18)

6 27. Mr. Lehman stated that after learning there were discussions between the City and the  
7 BNSF regarding the possibility of adding a median on 35<sup>th</sup> Avenue to include an automatic gate with  
8 flashing lights and with respect to advanced preemption being included at both crossings (35<sup>th</sup>  
9 Avenue and the Indian School Road Connector) Staff had discussion with the parties to address  
10 Staff's concerns. (Tr.34:3-14)

11 28. Mr. Lehman further testified that it is Staff's belief that the service level at the  
12 crossings is LOS-F. (Tr.37:13-14)

13 29. Mr. Lehman stated that Staff believes that the proposed improvements for the Indian  
14 School Road Connector and 35<sup>th</sup> Avenue will make the crossings safer than at present and will  
15 improve the public welfare.

16 30. Staff is also recommending that ADOT file, within fifteen months of the effective date  
17 of this Decision, with the Commission's Docket Control, as a compliance item in this docket, a status  
18 update relating the progress of discussions, analyses, or plans concerning the implementation of a  
19 median and crossing gates for northbound traffic on 35<sup>th</sup> Avenue at the crossing.

20 31. Further testifying, Mr. Lehman stated that Staff also believes that it would be  
21 extremely problematical to establish a grade separated crossing at the intersection of Grand Avenue,  
22 Indian School Road and 35<sup>th</sup> Avenue. (Tr.40:9-15)

23 32. Staff's recommendations are reasonable and appropriate and ADOT's Application to  
24 upgrade the at-grade crossings at the Indian School Road Connector, 35<sup>th</sup> Avenue and Grand Avenue  
25 should be approved.

### 26 CONCLUSIONS OF LAW

27 1. The Commission has jurisdiction over the parties and over the subject matter of the  
28 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and

1 40-337.01.

2 2. Notice of the Application was provided in accordance with the law.

3 3. The installation of the crossing upgrades is necessary for the public convenience and  
4 safety.

5 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as  
6 recommended by Staff.

7 5. ADOT should file a status update as discussed in Finding of Fact No. 30 hereinabove.

8 6. After installation of the crossing upgrades, the Burlington Northern and Santa Fe  
9 Railway Company railroad should maintain the crossings in accordance with A.A.C. R14-5-104.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's  
12 Application, as described herein is hereby approved.

13 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
14 shall complete the crossing upgrades as described in the Application within fifteen months of the  
15 effective date of this decision.

16 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
17 shall notify the Commission, in writing, within ten days of both the commencement and completion  
18 of the crossing upgrades, pursuant to A.A.C. R14-5-104.

19 IT IS FURTHER ORDERED upon completion of the respective crossing upgrades, the  
20 Burlington Northern Santa Fe Railway Company shall maintain the crossings in compliance with  
21 A.A.C. R14-5-104.

22 ...

23 ...

24 ...

25 ...

26 ...

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28 ...



1 IT IS FURTHER ORDERED that the Arizona Department of Transportation shall file, within  
 2 fifteen months of the effective date of this decision, with the Commission's Docket Control, as a  
 3 compliance item in this docket, a status update relating to the progress of discussions, analyses, or  
 4 plans concerning the implementation of a median and crossing gates for northbound traffic on 35<sup>th</sup>  
 5 Avenue at the crossing.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8

9

10 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11

12 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

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IN WITNESS WHEREOF, I, JODI JERICH, Executive  
 Director of the Arizona Corporation Commission, have  
 hereunto set my hand and caused the official seal of the  
 Commission to be affixed at the Capitol, in the City of Phoenix,  
 this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

17

18

\_\_\_\_\_  
 JODI JERICH  
 EXECUTIVE DIRECTOR

19

20

DISSENT \_\_\_\_\_

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DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE  
2 RAILWAY

3 DOCKET NO.: RR-02635B-13-0034

4 James R. Redpath  
5 Assistant Attorney General  
6 OFFICE OF THE ATTORNEY GENERAL  
7 1275 West Washington Street  
8 Phoenix, AZ 85007

Kelly Roy, Utility Project Coordinator  
MARICOPA COUNTY  
DEPARTMENT OF TRANSPORTATION  
2901 West Durango Street  
Phoenix, Arizona 85009-6357

7 Cynthia S. Campbell  
8 Assistant City Attorney  
9 OFFICE OF THE CITY ATTORNEY  
10 200 West Washington Street, Suite 1300  
11 Phoenix, AZ 85003-1611

Belinda Cummings, Project Manager  
CITY OF PHOENIX  
STREET TRANSPORTATION  
1034 E. Madison St.  
Phoenix, AZ 85034

10 Patrick J. Black  
11 FENNEMORE CRAIG, PC  
12 3003 North Central Avenue, Suite 2600  
13 Phoenix, AZ 85012-2913  
14 Attorneys for BNSF

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

13 Melvin V. Thomas, Manager Public Projects  
14 BURLINGTON NORTHERN SANTA FE  
15 RAILWAY COMPANY  
16 740 East Carnegie Drive  
17 San Bernardino, CA 92408-3571

Brian Lehman, Chief  
Railroad Safety Section  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

16 Vicki Bever, Manager  
17 Utility & Railroad Engineering  
18 ARIZONA DEPARTMENT OF  
19 TRANSPORTATION  
20 205 South 17<sup>th</sup> Avenue, M/D 618E  
21 Phoenix, AZ 85007-3212

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22

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